IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 16458 of 2004(H)

PETITIONER:

P.DIVAKARAN, OVERSEER, ELECTRICAL
MAJOR SECTION, VIZHINJAM, THIRUVANANTHAPURAM, R/A.
THOTTATHUVILAKATHU VADAKKARIKUVEEDU, MUKKOLA,
MALLOOR P.O. VIZHINJAM, THIRUVANANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS:
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1. THE KERALA STATE ELECTRICITY BOARD,
REP. BY ITS SECRETARY, VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER,(HUMAN RESOURCES
MANAGEMENT), K.S.E.B. PATTOM, THIRUVANANTHAPURAM.

3. THE EXECUTIVE ENGINEER,
ELECTRICAL DIVISION, NEDUMANGADU.

BY ADV. SRI.KODOTH SREEDHARAN, SC, KSEB
SRI.C.K.KARUNAKARAN, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 16458 of 2004(H)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER NO.GBI/1404/90 DTD. 7.2.97.

EXT.P2: COPY OF THE ORDER NO.EB4(a)/92 DTD.13.10.1992.

EXT.P3: COPY OF THE ORDER NO.EB4(a)/2001/LWA DTD. 27.10.2001.

EXT.P4: COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DTD.2.9.2003.

EXT.P5: COPY OF THE JUDGMENT IN W.P.(C).NO.2963/2004 DTD.27.1.2004 OF THIS HON'BLE COURT.

EXT.P6: COPY OF THE ORDER DTD. 17.4.2004 NO.EB/LAW/WP2963/04.

EXT.P7: COPY OF THE MEDICAL CERTIFICATE DTD.30.1.2006 ISSUED FROM ARUMANA HOSPITAL, THIRUVANANTHAPURAM.

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// TRUE COPY//

K.BALAKRISHNAN NAIR, J.

W.P.(C) No.16458 OF 2004-H

Dated this the 13th day of July, 2007.

J U D G M E N T

The petitioner, while working as Line Assistant in Electrical Major Section, Peyad was placed under suspension, on the charge of unauthorised absence. The period of absence was from 1-4-1990 to 30-11-1990. The disciplinary proceedings initiated against him for the said period of unauthorised absence ended in awarding punishment of barring increment for 6 months, as per order dated 15-2-1992. The petitioner appealed against the said order before the Chief Engineer, (Electrical General). The appeal was allowed and the punishment was set aside and the matter was remitted to the disciplinary authority for consideration. The disciplinary authority by Ext.P1 order exonerated the petitioner from the charges and ordered to treat the period of suspension as duty for all purposes. The period of absence was treated as period of leave which will not count for increment by the Chief Engineer (Electrical General), by Ext.P2 order. But, later, the Chief Engineer (HRM) revised the order, on finding that the petitioner has attended official duty for 51 days within the period from 1-4-1990 to 30-11-1990. Therefore, Ext.P2 was cancelled. The petitioner preferred Ext.P4 representation before the Chief Engineer (HRM) claiming that he worked on all days and therefore

the entire period may be treated as duty and salary may be paid. This Court by Ext.P5 judgment directed the consideration of Ext.P4. The matter was considered and the Chief Engineer passed Ext.P6 proceedings. The Chief Engineer ordered that out of the period of absence 51 days period will be treated as duty and the balance will be treated as leave without allowance. This writ petition is filed challenging Ext.P6 and seeking consequential reliefs. The petitioner attacks the order as illegal and irrational.

2. The respondents have not filed any counter affidavit.

3. The period of suspension is already treated as duty for all purposes. The point to be decided is whether the period of alleged unauthorised absence should also be treated as duty for all purposes. According to the petitioner, since the charge is false, the said period is also be treated as duty for all purposes. Whether the petitioner was present or absent during the period is a disputed question of fact which this Court cannot decide under Article 226 of the Constitution of India. The fact that the charge of unauthorised absence is false will not have the effect of treating him as present during the said period. The petitioner is entitled to get the salary only for the days he has actually worked. For the balance period he has to be granted leave. The said period is not treated as unauthorised absence. Therefore, I find no reason to interfere with the decision of the Chief

Engineer contained in Ext.P6. Accordingly, the Writ Petition fails, and it is dismissed.

K.BALAKRISHNAN NAIR,
JUDGE.

MS